

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1564 OF 2006

KASHINATH TUKARAM LAD)
 residing at Post: Dhakmole)
 Taluka Chiplun, Dist. Ratnagiri)
 Presently at Nashik Road Central) .. PETITIONER
 Prison)

Versus

1. THE COMMISSIONER OF POLICE)
 BRIHAN MUMBAI, office of the)
 Commissioner of Police,)
 MUMBAI 400 001)
2. THE STATE OF MAHARASHTRA)
 through the Under Secretary)
 Govt. of Maharashtra, Home)
 Dept. (Special), Mantralaya,)
 MUMBAI 400 032)
3. THE SENIOR INSPECTOR OF)
 POLICE, Nagpada Police)
 Station, Mumbai 400 008.) .. RESPONDENTS

Mr. S. Rupwate with P.M. Gaikwad & P.S. Sarkale
 for petitioner
 Mr. D.S. Mhaispurkar, APP

CORAM:-SMT. RANJANA DESAI &
 D. B. BHOSALE, JJ.

DATED:-15/3/2007

ORAL JUDGMENT:-(Per Smt. Ranjana Desai, J.)

. The petitioner is detained under order of
 detention issued by the Commissioner of Police,
 Brihan Mumbai under the provisions of the
 Maharashtra Prevention of Dangerous Activities of

Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the said Act" for short), with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The order of detention along with grounds of detention and the material in support thereof was served on the petitioner on 10/5/06 when he was in jail.

2. The order of detention is based on C.R. No. 674/05 registered at Nagpada Police Station under Sections 120(b), 114, 143, 144, 147, 149 of Indian Penal Code ("IPC" for short) read with Sections 4, 25 of the Arms Act read with Section 37(a) read with Section 135 of the Bombay Police Act.

3. The incident in connection with which C.R. No. 674/05 was registered took place on 23/12/05. The petitioner was arrested on 25/12/05. In camera statement of Witness A was recorded on 4/4/06 in which he deposed about an incident which had taken place in November, 2005. According to witness A the petitioner was involved in this incident. Statement of witness B was recorded on 5/4/06. He deposed about an incident which had taken place in the first week of December, 2005. According to him

the petitioner is involved in this incident. Incamera statements of both the witnesses indicate that the petitioner is indulging in extortion activities.

4. The Sponsoring Authority submitted the proposal on 12/4/06. After perusing the documents submitted along with the proposal the detaining authority was satisfied that the petitioner had become a menace to the society; that he has taken to the life of crimes and that it is necessary to preventively detain him. Hence he issued the order of detention. In the present petition there is a challenge to the said order of detention.

5. We have heard at some length Mr. Rupwate, the learned counsel appearing for the petitioner.

6. Mr. Rupwate assailed the impugned order of detention on three counts. Mr. Rupwate submitted that in the affidavit-in-reply in paragraph 7, the detaining authority has made a reference to four orders of detention issued against the petitioner under the National Security Act. He submitted that these orders of detention have not been supplied to the petitioner and, therefore, the petitioner was

prejudiced. The learned counsel urged that it is evident that the detaining authority has relied upon extraneous material which was not supplied to the petitioner and, therefore, there is a violation of the petitioner's rights under Article 22(5) of the Constitution of India. He submitted that on this count, the impugned order of detention must be set aside.

7. Secondly Mr. Rupwate submitted that there is an unexplained delay in issuing the order of detention. He drew our attention to the grounds of detention. He pointed out that it is stated in the grounds of detention that in the year 2003 action under Section 107 of the Criminal Procedure Code ("Code" for short) was taken against the petitioner and bond of Rs.5,000/- for keeping peace for the period of one year was obtained from him on 14/9/2005. It is the case of the detaining authority and the Sponsoring Authority that on 25/11/05, the petitioner has committed an offence in respect of which C.R. No. 674/05 is registered. The learned counsel urged that, if that was so, then the police ought to have taken action against the petitioner for breach of bond which was taken from him. Instead of doing that

the sponsoring authority waited for a considerably long time and issued the order of detention on 6/5/06. He submitted that there is no explanation whatsoever for this delay. He submitted that it was open for the detaining authority to take action under Section 122(2) of the Code for breach of bond. Bypassing this procedure a delayed order of detention is issued. The learned counsel submitted that this delay vitiates the detention order and moreover such action would set a bad precedent and hence order of detention must be set aside on that count.

8. Mr. Rupwate pointed out that in the grounds of detention it is stated that it is admitted that the bond was taken from the petitioner but it is further mentioned that stern preventive action was to be taken against the petitioner and hence, the action for breach of bond was not initiated against the petitioner. The learned counsel urged that this can hardly be any explanation. If at all the apprehension that petitioner is likely to indulge in prejudicial activities was genuine then the order of detention ought to have been issued immediately after the first incident.

9. Lastly Mr. Rupwate submitted that when the order of detention was issued, the petitioner was in custody, his application for bail was pending and in fact on 10/5/06 he was released on bail. However, there is no reference in the grounds of detention to the fact that the petitioner had filed an application for bail. The detaining authority was oblivious of the fact that the bail application filed by the petitioner was pending. The bald statement made in the grounds of detention that the petitioner may be granted bail and in the event of his availing of the bail facilities, he will become a free person is not supported by any material. It is merely the ipse dixit of the detaining authority. On this ground also, the learned counsel urged that the order of detention must be set aside.

10. In support of his submissions Mr. Rupwate relied on the judgments of the Supreme Court in Ramesh Yadav v. District Magistrate, Etah & Ors., (1985) 4 SCC 232 and T.V. Sarvanan @ S.A.R. Prasana Venkatachaariar Chaturvedi v. State through Secretary & Anr., 2006 All MR (Cri) 1204 (S.C.).

11. As against this Mr. Mhaispurkar, the learned APP submitted that no interference is necessary with the impugned order of detention. He drew our attention to the affidavit of Shri A. N. Roy, Commissioner of Police, who is the detaining authority, to the affidavit of Shri Bansode, Under Secretary to the Govt. of Maharashtra, Home Department (Special) and the affidavit of Sadanand Sawant, PSI, attached to Nagpada Police Station, Mumbai, which is the sponsoring authority. Mr. Mhaispurkar submitted that the alleged delay in passing the order of detention is explained by the detaining authority.

12. The learned APP contended that the possibility of the petitioner being released on bail was imminent and, therefore, the order of detention issued on the said apprehension is perfectly justified. The learned APP contended that in the circumstances of the case, the detaining authority was satisfied that there was need to preventively detain the petitioner considering the nature of the prejudicial activities in which the petitioner is involved rather than taking action against the petitioner for breach of bond and, therefore, he has issued the detention order. His subjective

satisfaction cannot be questioned.

13. As regards the point regarding the issuance of order of detention while the petitioner was in custody, the learned APP relied on the judgment of the Supreme Court in A. Geetha v. State of Tamil Nadu & Anr., 2006 AIR SCW 4382 and a judgment of this court to which one of us (Smt. Ranjana Desai, J.) is a party in Shri Mohamed Idris Munna Qureshi v. Shri A.N. Roy & Ors, Cri. W. P. No. 905 of 2006 decided on January 23/24, 2007. For the general principles underlying preventive detention, the learned counsel relied on Union of India & Anr. v. Chaya Ghoshal (Smt.) & Anr., (2006) 1 SCC (Cri.) 257.

14. We have given anxious consideration to the submissions advanced by both sides. It is true that in the affidavit-in-reply the detaining authority has made a reference to four orders of detention which were issued against the petitioner. However, we find no substance in the submission of Mr. Rupwate that material in support of this averment made in the affidavit ought to have been supplied to the petitioner. This is because these orders of detention do not form the basis of the

order of detention. The detaining authority has not relied upon them while issuing the order of detention. In his affidavit the detaining authority has after referring to the said detention orders stated that the preventive action taken against the petitioner is not relied upon by him for issuing the present order of detention. In view of this assertion made in the affidavit, in our opinion the order of detention cannot be set aside on the ground that the material in support of the four orders of detention referred to in the affidavit has not been supplied to the petitioner. The first submission of Mr. Rupwate must, therefore, fail.

15. It is true that in the grounds of detention the detaining authority has referred to a bond which was taken from the petitioner on 14/9/05. The detaining authority has made it clear that action was not initiated against the petitioner for breach of bond because it was felt that stern preventive action was necessary against the petitioner. The petitioner was then involved in an incident which had taken place on 23/12/05 and he was arrested on 25/12/05. It is urged that the moment he was arrested in this case, action under

Section 122(2) of the Code ought to have been taken against the petitioner and the detaining authority could not have waited till 6/5/06 for issuing the order of detention. According to the learned counsel there is unexplained delay in issuing the detention order.

16. We are not impressed by this submission. We find from the grounds of detention that after the incident dated 23/12/05 statements of witnesses A and B were recorded on 4/4/06 and 5/4/06 respectively. In his statement witness A deposed about an incident which had taken place on November, 2005 in which the petitioner was involved and witness B deposed about an incident which had taken place in October, 2005 in which the petitioner was involved. Therefore, it is not as if prior to the incident dated 23/12/05 the petitioner had not indulged in any activities prejudicial to the maintenance of public order. Statements of witnesses A and B indicate that the petitioner had indulged in extortion activities. If the detaining authority chose to take resort to preventive detention rather than taking action under Section 122(2) of the Code, he cannot be faulted or questioned for that. It is entirely his

subjective satisfaction which cannot be probed into.

17. It is pertinent to note that after the proposal was submitted by the sponsoring authority on 12/4/06, the detention order came to be issued on 6/5/06. In the peculiar facts and circumstances of the case and considering the chronology of events, we are unable to come to the conclusion that there is any unexplained delay in issuing the order of detention. This contention of the learned counsel must, therefore, fail.

18. The last submission of Mr. Rupwate was regarding the petitioner being in custody while the order of detention was issued. It is submitted that the petitioner had filed a bail application and that bail application ought to have been placed before the detaining authority. In the grounds of detention the detaining authority has clearly expressed his awareness about the fact that the petitioner was in custody while the order of detention was issued. He has stated that he was of the view that the petitioner may be granted bail and he may avail of the bail facility and after becoming a free agent, he may indulge in activities

prejudicial to the maintenance of public order. He has stated that in view of the petitioner's tendencies and inclinations reflected in offences committed by him, he was satisfied that in the event of the petitioner being enlarged on bail, he would indulge in activities prejudicial to the maintenance of public order. Therefore, in this case the detaining authority was aware about the custody position of the petitioner.

19. It is true that the second application for bail filed by the petitioner was not placed before the detaining authority. We have not been told as to how the said bail application is a vital and material document. If at all the petitioner wants to contend that it is a vital and material document, the copy thereof ought to have been annexed to the petition. The said application is not annexed to the petition. The prejudice caused to the petitioner ought to have been demonstrated to us. Since the detaining authority was aware that the petitioner was in custody and he apprehended that he may be released on bail and indulge in prejudicial activities, he issued the order of detention. We cannot fault the detaining authority for having issued the detention order on

the basis of such apprehension. In our opinion, non placement of second bail application before the detaining authority does not vitiate the detention order.

20. We shall now consider the relevant judgments particularly, the judgments on which the petitioner has placed reliance.

21. In Rameshwar Shaw v. District Magistrate Burdwan & Anr., AIR 1964 SC 334, while dealing with the similar question, the Supreme Court observed that the question as to whether an order of detention can be passed against a person who is in jail will always have to be decided in the circumstances of each case. In Kumarunnissa v. Union of India and another, (1991) 1 SCC 128, while dealing with the same question, the Supreme Court held that even in the case of a person who is in custody, a detention order can validly be passed if the authority is aware of the fact that he is actually in custody, that he has reason to believe on the basis of the material placed before him (a) that there is a real possibility of his being released on bail, (b) that on being released on bail, he would in all probability indulge in

prejudicial activities and (c) if it is felt essential to prevent him from so doing.

22. Against the background of these principles, it is necessary to refer to Rajesh Gulati's case (supra) on which the petitioners' counsel has placed reliance. In that case, five bail applications filed by the detenu therein had been rejected. It is against this background that the Supreme Court held that the detaining authority could not have stated in the grounds of detention that bail is normally granted in such cases and that there was possibility of the detenu coming out on bail, because it was not a normal case.

23. In A. Geetha's case (supra), the detenu was in jail, when the detention order was issued. The detaining authority had stated in the grounds of detention that in similar cases orders granting bail are granted by various courts. The Supreme Court observed that this subjective satisfaction based on material placed before the detaining authority cannot be normally interfered with. The Supreme Court distinguished its judgment in Rajesh Gulati's case (supra). We may quote the relevant paragraph of the said judgment.

"It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. Appellant has not disputed correctness of this statement. Strong reliance was placed by learned counsel for the appellant on **Rajesh Gulati Vs. Govt. of NCT of Delhi and Another (2002 (7) SCC 129)**. The factual scenario in that case was entirely different. In fact, five bail applications filed, had been already rejected. In that background this Court observed that it was not "normal" case. The High Court was justified in rejecting the stand of the appellant. (See: Ibrahim Naseer V. State of Tamil Nadu and Anr. (JT. 2006(6) SC 228) and Senthamilselvi V. State of T.N. and Another (2006 (5) SCC 676))".

24. It is clear therefore that the judgment of the Supreme Court in **Rajesh Gulati's case (supra)**, will

have to be confined to its peculiar facts. The important circumstance in that case was that the detenu's bail applications were rejected on five occasions.

25. In T.V. Saravanan's case (supra), seven cases were registered against the detenu. The detenu who claimed to be a spiritual mentor attracted large number of followers including females. In one case he had sexually exploited the wife and daughter of the complainant. In another case he had cheated the wife of the complainant of jewellery worth Rs.6,00,000/- promising to cure her cancer. He had duped many persons. His one bail application was rejected. Another bail application was withdrawn by him. It is against the background of the above facts, relying on Rajesh Gulati's case (supra), the Supreme Court held that there was no cogent material before the detaining authority on the basis of which he could be satisfied that the detenu was likely to be released on bail.

26. Facts of Saravanan's case (supra) which is based on Rajesh Gulati's case (supra) cannot be equated with the present case. In the present case, the detaining authority was aware of the fact

that the petitioner was in custody when the detention order was issued. He was aware that the petitioner's bail application was rejected by the Sessions Court on 17/2/2006. After stating this he has expressed the apprehension that the petitioner may be granted bail and after becoming a free agent, he may indulge in activities prejudicial to the maintenance of public order. He has, therefore, issued the order of detention. His satisfaction, based on the material placed before him cannot be questioned in the facts and circumstances of the instant case. In our opinion, the instant case is covered by the judgment of the Supreme Court in A. Geetha's case (supra).

27. We are also of the opinion that the judgment of the Supreme Court in Ramesh Yadav's case (supra) does not help the petitioner. In that case, the Supreme Court has observed that merely on the ground that an accused as an under-trial prisoner was likely to get bail, an order of detention should not ordinarily be passed and if the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised.

28. In Kamarunissa's case (supra), the Supreme Court has clarified that even in the case of a person in custody a detention order can be validly passed if the detaining authority is aware of the fact that he is actually in custody; that if he has reason to believe on the basis of reliable material before him that there is a real possibility of his being released on bail and that on being so released he would in all possibility indulge in prejudicial activity and if it is felt essential to detain him to prevent him from so doing. The Supreme Court has further clarified that if the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher court. In our opinion, in the present case, the detaining authority has recorded the necessary awareness and satisfaction which is based on material placed before him. His satisfaction cannot be questioned. Hence, judgment of the Supreme Court in Ramesh Yadav's case (supra) is not attracted to the facts of the present case.

29. In the ultimate analysis, we are of the opinion that there is no infirmity in the impugned order of detention. It is perfectly justified and legal. Hence, the petition is dismissed.

JUDGE .

JUDGE .